IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8347 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SHAIKH UMAR FARUK ISMAILBHAI

Versus

GOVT OF INDIA

Appearance:

MR RV DESAI for Petitioner

RULE SERVED for Respondent No. 1

MS VASUBEN P SHAH for Respondent No. 2

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 15/04/98

ORAL JUDGEMENT

The petitioner-workman is aggrieved by the order dated 24th October, 1990, of the Ministry of Labour, New Delhi, refusing to make a reference of industrial dispute regarding termination of service of the petitioner-workman. The reason mentioned in the order is that the workman had not completed 240 days of continuous service in the 12 calendar months preceding the date of

his termination and, as such, he is not entitled to the benefits of Section 25-F, read with Section 25-B of the Industrial Disputes Act, 1947.

2. The learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of Telco Convoy Drivers Mazdoor Sangh and another V/s. State of Bihar and others - A.I.R. 1989 Supreme Court 1565. In that case, the Supreme Court held that the function of the appropriate Government is an administrative function and not judicial or quasi-judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. It is submitted in the present case, the Government has assumed judicial function and finally decided the dispute on merits which is not the function of the government.

3. On the other hand it is submitted by the respondents-employer that in the aforesaid judgment itself the Supreme Court has further held that there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. It is, therefore, submitted that the order of the government did not call for interference.

4. It is further submitted the petitioner-workman was appointed on casual basis for a period of 90 days, on his own application for such appointment for 90 days. However, after 34 days of service, the workman remained absent and the period of 90 days had also expired he reported for duty on 31st July, 1984. Thus, the appointment of the workman as casual appointment expired at the end of June, 1987. Therefore, when he reported for duty after his continued absence from 4th May, 1987 till 31st July, 1987, he had no appointment. He had not completed 240 days. Therefore there was no question of following the provisions of Section 25-F of the Industrial Disputes Act. The dispute raised was, therefore, totally frivolous and deserves to be dismissed and did not require any reference to be made.

5. I find that this is a case which would be the exception laid down by the Supreme Court that the State Government may come to a conclusion that the demand is perverse or frivolous and does not merit a reference. In

the present case the workman was, on his own application for appointment of 90 days as casual worker, appointed as such, and after 34 days of service he remained absent and reported for duty after 120 days. In such a case there is no fault on the part of the respondents-employer. The respondents-employer cannot be said to have terminated the service of the workman from 31st July, 1987 on which date the workman alleged that service was orally terminated by refusing to.

6. Thereafter, for three years the workman did not raise any dispute. The workman raised dispute by a letter dated 21st March, 1990, to the Assistant Commissioner (Central), Ahmedabad. Though there is no period of limitation, this delay of three years would certainly be relevant to be taken into consideration.

7. In the facts and circumstances of the case and lapse of time, it would be giving false hope if such a dispute is referred now. Since the dispute is not required to be referred, the action of refusing to make the reference cannot be interfered with. Hence, this petition is dismissed. Rule is discharged. No order as to costs.

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